Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258

REPLY COMMENTS ON FIFTH NOTICE OF PROPOSED RULEMAKING

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EXECUTIVE SUMMARY

The record developed in response to the *Fifth NPRM* establishes that when addressing the relocation of BRS licensees and lessees from the 2150-2162 MHz band, the Commission cannot merely apply the rules it adopted more than a decade ago to govern the clearing of point-to-point microwave operations from spectrum reallocated for PCS. Those commenting in response to the *Fifth NPRM* clearly recognize both that BRS is fundamentally different from point-to-point microwave (primarily because it is used to provide a wide-area service to consumers) and that the competitive relationship between likely AWS licensees and BRS incumbents raises concerns not present during most involuntary refarmings.

Unfortunately, the AWS interests fail to appreciate fully the fundamental differences, much less propose rules that appropriately accommodate them. While they recognize that "the rights of incumbent licensees should be of significant importance to the Commission" and that the rules must "ensure that incumbents are made whole post-relocation," adoption of their specific proposals would jeopardize the viability of the growing businesses that are operating on BRS channels 1 and 2 today.

The overwhelming majority of commenters have opposed the suggestion that BRS operators be precluded from adding new subscribers prior to the time they are involuntarily relocated. Moreover, the record establishes that BRS system operators must be free not only to install equipment at new subscribers' premises, but also must be free to modify their base stations to accommodate growth and to secure reimbursement for the costs they incur in the future migrating to comparable facilities.

To effectuate the Commission's commitment that AWS would fully fund the migration of BRS to alternative facilities, the Commission must reject CTIA's proposal to "sunset" the AWS relocation obligation in fifteen years. The AWS performance requirements are such that not all BRS incumbents necessarily will be relocated within that time frame, and the better course is to adopt WCA's proposal that all BRS incumbents be required to self-relocate, at the expense of the AWS F Group auction winner, by a date certain.

BRS incumbents should not be required to provide subscriber locations or binding estimates of their relocation costs prior to the AWS auction. Subscriber locations are proprietary information that AWS auction participants do not need to participate in the auction. Because of a variety of uncertainties (including, most significantly, uncertainty as to when any given AWS auction winner will want to involuntarily relocate a BRS incumbent), BRS incumbents are in no position to make a binding estimate of their relocation costs. Consistent with Commission precedent, the burden of conducting due diligence, and the risk of error, should not be shifted from potential new entrants to the incumbents. ULS contains substantial information regarding BRS, and is being supplemented with additional information pursuant to the *Order* in this proceeding. That information, coupled with an AWS auction participant's knowledge of its own deployment plans, is sufficient to permit auction participants to make reasonable evaluations of their relocation costs.

None of the filings submitted in response to the *Fifth NPRM* alters WCA's view that the balanced proposals it crafted based on the Commission's recent refarming experiences (including the Commission's 2004 decisions in the 800 MHz band proceeding), best facilitate the relocation

of BRS channels 1 and 2 from the 2150-2162 MHz band in a manner that is fair to both incumbents and new entrants. There is no disputing that BRS incumbents are entitled to comparable facilities, that those facilities must include any necessary CPE, and that they must operate utilizing wireless technology. The record also establishes that comparability must be measured across the BRS incumbents entire service area, and that any evaluation includes factors in addition to throughput, reliability and operating costs. By allowing BRS incumbents to select and deploy their own comparable facilities, subject to cost controls and deadlines similar to those used in the 800 MHz rebanding, the Commission can avoid the potential for anticompetitive abuse that the record establishes.

There is unanimity among those addressing the issue that the methodology used for predicting PCS interference to point-to-point microwave is inapplicable here, and that the Commission should employ a line-of-sight based approach for determining when an AWS base station poses a threat of interference to incumbent facilities. There is also unanimity that migrations must occur on a system-by-system basis, not link-by-link.

The Commission should ensure that BRS spectrum lessees, the incumbents with the most to lose if a migration to comparable facilities is mishandled, are necessary parties to any relocation process. The Commission cannot rely on the BRS licensee to protect the interests of its lessee. Finally, the record offers no support for discriminating against those who acquire BRS licenses or who acquire control over BRS licensees after the effective date of new rules.

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The Wireless Communications Association International, Inc. ("WCA") hereby submits its reply to the comments filed in response to the Commission's *Fifth Notice of Proposed Rulemaking* ("*Fifth NPRM*") in the above-captioned proceeding.[1]

I. INTRODUCTION.

As WCA discussed in its comments in response to the *Fifth NPRM*, when addressing the relocation of Broadband Radio Service ("BRS") licensees and lessees from the 2150-2162 MHz band, the Commission cannot merely apply the rules it adopted more than a decade ago to govern the clearing of point-to-point microwave operations from spectrum reallocated for the Personal Communications Service ("PCS").[2] The record before the Commission clearly reflects both that BRS is fundamentally different from point-to-point microwave (primarily because it is used to provide a wide-area service to consumers) and that the competitive relationship between likely Advanced Wireless Services ("AWS") licensees and BRS incumbents raises concerns not

[1] *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order, 20 FCC Rcd 15855 (2005)["*Fifth NPRM*" or "*Order*"].

[2] *See* Comments of Wireless Communications Ass'n Int'l, Inc., ET Docket No. 00-258, at 7-10 (filed Nov. 25, 2005)["WCA Comments"].

present during most involuntary refarmings.[3] As WCA demonstrates in its comments, the Commission must take the differences into account in formulating the rules for refarming the 2150-2162 MHz band, just as the Commission has done in connection with every other refarming since the first.[4]

Unfortunately, the comments filed on behalf of those likely to bid for AWS authorizations fail to appreciate fully the fundamental differences, much less propose rules that appropriately accommodate them. WCA applauds the AWS interests for at least recognizing that "the rights of incumbent licensees should be of significant importance to the Commission"[5] and that the rules must "ensure that incumbents are made whole post-relocation."[6] Yet, for the reasons discussed in more detail below, their specific proposals are one-sided affairs that, if

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[3] *See* Comments of BellSouth Corp., *et al.*, ET Docket No. 00-258 at 5 (filed Nov. 23, 2005)["BellSouth Comments"]("the Commission should recognize in its rules that AWS licensees are likely competitors to BRS"); Comments of Sprint Nextel Corp., ET Docket No. 00-258 at 8-13 (filed Nov. 25, 2005)["Sprint Nextel Comments"]; Comments of T-Mobile USA, Inc., ET Docket No. 00-258 at 3 (filed Nov. 25, 2005)["T-Mobile Comments"]; WCA Comments at 11 ("BRS channels 1 and 2 are primarily used to provide wireless broadband services directly to retail subscribers, and that many new AWS licensees will either already be offering competitive DSL, cable modem or wireless broadband services or will be acquiring their AWS spectrum with the intent of offering a competing wireless broadband service.")(citation omitted).

[4] *See* WCA Comments at 7-10, *citing, e.g.*, *Redesignation of the 17.7-19.7 GHz Frequency Bands, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, Report and Order, 15 FCC Rcd 13430, 13468 (2000); *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315, 12329-30 (2000)["*MSS Second Report and Order*"]; *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463, 1508 (1995)["*800 MHz SMR First R&O*"]; *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8825, 8870 (1996)["*Microwave Cost-Sharing Order*"].

[5] Comments of Verizon Wireless, ET Docket No. 00-258, at 2 (filed Nov. 23, 2005)["Verizon Wireless Comments"].

[6] Comments of CTIA, ET Docket No. 00-258, at 9 (filed Nov. 25, 2005)["CTIA Comments"].

adopted, would jeopardize the viability of the growing businesses that are operating on BRS channels 1 and 2 today. At bottom, their proposals must be rejected by the Commission because they are inconsistent with the two overarching principles the Commission established in the *Fifth NPRM* to guide this proceeding – the Commission "need[s] to minimize the disruption to incumbent BRS . . . operations during the transition"[7] and AWS auction winners "must guarantee payment of all [BRS] relocation expenses" absent a negotiated agreement to the contrary.[8]

Thus, WCA remains convinced that the balanced proposals it crafted based on the Commission's recent refarming experiences (including the Commission's 2004 decisions in the 800 MHz band proceeding), best facilitate the relocation of BRS channels 1 and 2 from the 2150-2162 MHz band in a manner that is fair to both incumbents and new entrants. The WCA approach, will accomplish the Commission's stated goals in this proceeding, and will do so in a manner that is fair to future AWS licensees.

II. DISCUSSION.

A. *BRS Licensees And Lessees Must Be Permitted To Add New Subscribers And Modify Their Existing Facilities At 2150-2162 MHz Until Such Time As They Migrate To Other Spectrum.*

Before turning to the rules and policies that will govern the actual migration of BRS operations from the 2150-2162 MHz band to alternative spectrum,[9] WCA must reiterate its objection to suggestions that BRS 2.1 GHz deployments that are expanded or modified following the adoption of an order addressing the *Fifth NPRM* only be afforded secondary status and that

[7] *Fifth NPRM*, 20 FCC Rcd at 15862.

[8] *Id.* at 15869.

[9] As discussed *infra* at II.D.1, there is unanimity among those commenting that BRS operations should be relocated from the 2.1 GHz band to comparable facilities that utilize wireless technology.

BRS incumbents not be entitled to relocation compensation for those facilities.[10] These suggestions should be rejected, as they cannot possibly be squared with the Commission's commitment to minimize disruption to BRS incumbents and to assure full compensation for the migration to alternative spectrum.

Not surprisingly, the BRS industry uniformly opposes any such restrictions. The comments filed by BRS system operators establish that BRS systems operating at 2.1 GHz are growing in response to consumer demand (often in areas where cable modem and DSL services are not available) and that their future viability is dependent on their ability to add new subscribers and amortize base station investment among a large subscriber base.[11] Indeed, *even CTIA has acknowledged that operating BRS systems must be permitted to add new subscribers*

[10] *See Fifth NPRM,* 20 FCC Rcd at 15867-68.

[11] *See, e.g.*, Sprint Nextel Comments at 21 ("BRS licensees cannot operate an ongoing commercial business if they cannot add new customers to the geographic areas where centralized receive station hubs are already deployed."); WCA Comments at 37 ("adoption of the proposed rule would be fundamentally unfair to BRS system operators, placing the interests of AWS licensees that may never construct facilities in a given area far ahead of the BRS interests that are today providing the public with valuable services."); Comments of C&W Enterprises, Inc., ET Docket No. 00-258, at 1 (filed Nov. 25, 2005)["C&W Comments"]. Comments of SpeedNet, L.L.C., ET Docket No. 00-258, at 2 (filed Nov. 22, 2005)["SpeedNet Comments"]. The substance of the arguments advanced by C&W Enterprises, Inc. ("C&W") and SpeedNet, L.L.C. ("SpeedNet") are consistent with the view of WCA that no restrictions should be placed on the ability of licensees and lessees to expanded BRS use of 2150-2162 MHz until their relocation to alternative spectrum actually occurs. However, the specific relief they propose does not go far enough. C&W proposes that BRS expansion should continue as primary "until the AWS entrant begins the process of initiating its own services on the 2.1 GHz spectrum." C&W Comments at 2. SpeedNet somewhat similarly proposes that expanded services "should continue to be regarded as primary operations subject to reimbursement by the AWS entrant until ninety (90) days from the date that the AWS entrant provides written notice that it desires to commence transition negotiations with the BRS licensee." SpeedNet Comments at 2. WCA cannot support either of these positions – BRS incumbents should remain primary, should be permitted to add subscribers and make system modifications, and be entitled to full relocation compensation until they actually relocate to replacement spectrum. Because mandatory negotiations can last as long as three years, and involuntary relocation can take months (if not years) after that, freezing BRS at the start of the relocation process will substantially hamper those BRS systems that are constantly growing.

until relocated, clearly stating that "[n]othing . . . should limit BRS licensees from adding customers in the markets where hub station receivers are already deployed."[12]

The sole dissent comes from Verizon Wireless, which "urge[s] the Commission to institute a freeze on the construction of new facilities and any other major modifications to BRS systems."[13] Verizon Wireless asserts that such a freeze would be helpful because "construction of new BRS facilities in the band would likely cause harmful interference to AWS systems…."[14] However, Verizon Wireless fails to acknowledge, even in passing, the serious adverse

[12] CTIA Comments at 12 (citation omitted). As a matter of principle, WCA believes BRS licensees should be permitted to add additional base stations within the Geographic Service Areas ("GSAs") at 2.1 GHz until they are relocated to alternative spectrum. *See* WCA Comments at 37-41. However, it does not appear that any existing BRS channel 1 or 2 operator contemplates adding additional base stations prior to relocation and thus WCA would not oppose adoption of CTIA's proposal that the cost of relocating any new base stations not be funded by AWS auction winners. *See* CTIA Comments at 12. *See also* Sprint Nextel Comments at 23.

[13] Verizon Wireless Comments at 6-7. Although Verizon Wireless does not specifically state that it would freeze the addition of new subscribers, that is the only logical conclusion one can draw from its assertion that a freeze is needed because "construction of new BRS facilities in the band would likely cause harmful interference to AWS systems . . .." *Id.* at 6. Since the 2150-2162 MHz band is primarily used for upstream subscriber-to-base station transmissions, it is the addition of new subscribers that arguably will cause additional interference (since base stations are passive listening devices in this band, and spectrum at 2.5 GHz is used to transmit).

[14] *Id*. Verizon Wireless overstates its case here, since as a practical matter the addition of new subscribers will not likely cause interference to AWS operations. In the case of video systems, of course, new subscribers pose no threat whatsoever because only passive receive equipment is installed at the subscriber's home. Interference to AWS will only come from new or modified BRS transmission facilities, and in all likelihood the only new transmission facilities that will be added by BRS operators in the 2150-2162 MHz band are the low-power, low-height transmitters that are placed on subscriber premises. In theory, there is a potential that a newly-installed customer premises transmitter will interfere with AWS handsets in close proximity. *See* Sprint Nextel Comments at App. D, p.4. However, in such cases it is virtually certain that the associated BRS base station receivers will be receiving debilitating interference from the AWS base station that is transmitting to the AWS handset, and thus migration of the BRS operations to alternative spectrum will be required in any event. Moreover, the AWS licensee will be in complete control of the situation. It will know before the auction whether a BRS system is operating on the 2150-2162 MHz band in its region, and it will know before the auction the authorized service area of that system in which new subscribers can be added. Thus, the AWS licensee can and should plan on relocating the BRS operations sooner, rather than later, if there is a risk of interference.

implications that such a freeze would have on incumbent BRS systems and on the ability of the public, particularly in rural areas, to secure access to wireless broadband services.[15]

Verizon Wireless clearly wants "to have its cake and eat it too." On one hand, it argues that AWS auction winners should have complete *carte blanche* in determining *when*, *if ever*, BRS systems operating at 2150-2162 MHz should be relocated. Yet, on the other hand it would preclude these operating businesses from adding new subscribers until the day (*if ever*) they are relocated.[16] While WCA certainly appreciates Verizon Wireless' recognition that "the rights of incumbent licensees should be of significant importance to the Commission," those words ring hollow when read in light of its proposal to prevent those who are currently licensed to operate on BRS channels 1 and 2 (most of whom acquired their spectrum either through auction or secondary markets transactions) from making use of the rights acquired.[17] One can certainly understand why Verizon Wireless would want to see competing BRS wireless broadband service providers stagnate (particularly since Verizon Wireless is today providing a competitive service using EVDO technology). But the fact that Verizon Wireless' proposal serves its own interests does not mean it serves the public interest.

To the contrary, the record establishes beyond peradventure that the public interest will be served by permitting operating BRS systems to meet the public demand for broadband by adding new subscribers to their systems until they are actually relocated.[18] Whatever harm

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[15] *See supra* note 11.

[16] *See* Verizon Wireless Comments at 6.

[17] *Id.* at 2. And, to add insult to injury, Verizon Wireless would "sunset" the AWS auction winners' relocation compensation obligations after ten years, leaving BRS licensees to fund their own relocation to the 2.5 GHz band if they interfere with AWS or suffer interference from AWS thereafter. *See id*. at 2-4.

[18] *See supra* note 11. It is worth noting that when the Commission adopted its initial freeze on 2 GHz microwave modifications, it exempted "new facilities [that] are operationally connected to a system" that otherwise was licensed prior to the freeze. *See Two Gigahertz Fixed Microwave Licensing Policy*, Public

Verizon Wireless might suffer as a result pales in comparison to that the public will suffer if BRS-based broadband service providers are banned from serving new subscribers.

Moreover, consistent with CTIA's recognition that "[n]othing . . . should limit BRS licensees from adding customers in the markets where hub station receivers are already deployed," BRS system operators should be free not only to install new customer premises equipment ("CPE") but also to modify existing base station facilities as necessary to accommodate subscriber growth. If operators are to have a meaningful right to add subscribers and secure compensation for their relocation, then operators must also have the right to modify their infrastructure as necessary to serve those new subscribers and to receive compensation upon involuntary migration to other spectrum.[19] If those modifications increase the cost of eventually refarming the 2150-2162 MHz band, so be it – AWS licensees concerned about escalating relocation costs should plan to migrate BRS licensees sooner rather than later, and thereby control their costs.

Notice, Mimeo No. 23115 (rel. May 14, 1992). Moreover, when the Commission adopted rules to govern the refarming of the 800 MHz Specialized Mobile Radio ("SMR") spectrum, it permitted site-based incumbents in the upper 200 channels to add facilities anywhere within their licensed 22 dBu interference-free contour, noting the unfairness of freezing incumbent modifications entirely. *See 800 MHz SMR First R&O*, 11 FCC Rcd at 1513-15.

[19] For example, the most likely base station modification that a BRS system operator will make is known as "sector splitting." When an operator sector-splits, it adds additional passive receive antennas to its base station system to increase the opportunities for frequency reuse. Thus, for example, when a system that has three 120 degree sectors reaches maximum capacity, the solution is often to modify the antenna system to provide for six 60 degree sectors. This allows the operator to use BRS channels 1 and 2 more efficiently by increasing the spectrum reuse, thereby allowing it to serve additional subscribers. Prior to the January 10, 2005 effective date of the current BRS rules, sector splitting was classified as so minor a facility modification that no prior Commission approval was required, and only an after-the-fact notice was given under former Section 21.42(c)(8) of the Rules. Indeed, if the Commission does restrict the ability of BRS licensees to modify their facilities in the 2.1 GHz band, it should specifically exempt any modification that would have been treated as a minor modification under former Section 21.41(b)(7) or (c) or that was subject to the minimal requirements of Section 21.42.

B. *The Commission Should Not Convert BRS Operations To Secondary Status And Relieve AWS Of Its Relocation Obligations As Of A "Sunset" Date.*

The record developed in response to the *Fifth NPRM* also establishes that the Commission should not adopt a "sunset" date after which BRS licenses in the 2150-2162 MHz band would become secondary and BRS operators would become responsible for curing interference to subsequent AWS deployments and avoiding interference from AWS, even if that requires the BRS system operator to migrate to alternative spectrum at its own cost. The comments overwhelmingly establish that under the circumstances present here, a sunset would be inconsistent with the Commission's commitment to relieve BRS incumbents of any migration costs and could lead to anticompetitive conduct by AWS auction winners.[20]

Although not one commenting party expresses support for the *Fifth NPRM*'s proposal to sunset the relocation obligation in ten years, CTIA proposes that "the Commission should adopt a single sunset date of 15 years following the start of the negotiation period for relocation after which new licensees would not be required to pay relocation expenses."[21] While CTIA's

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[20] *See* WCA Comments at 28-32; C&W Comments at 6-7 ("[i]f the AWS entrant is forcing the BRS licensee to relocate to new spectrum to allow for its own operations, then it should be obligated to pay for such a transition regardless of when the transition occurs."); SpeedNet Comments at 6-7 ("[o]nly the AWS entrant who slowly deploys services could possibly benefit from such a sunset rule.").

[21] CTIA Comments at 12. WCA notes that Sprint Nextel Corp. ("Sprint Nextel") advanced a similar proposal. *See* Sprint Nextel Comments at 44-45. Sprint Nextel reasons that "[a]llowing the BRS relocation obligation to expire five years before the AWS licensees must construct facilities in the band creates a perverse incentive for the AWS licensees to delay broadband deployment in order to avoid having to pay to relocate the incumbent licensees." *Id.* Thus, Sprint Nextel proposes that the relocation obligation end on the same date as the AWS licensee's initial authorization. *See id.* at 45. Sprint Nextel contends that by doing so, the Commission will "prevent AWS licensees from delaying the rollout of broadband service to the public for perceived regulatory gain." *Id.* However, Sprint Nextel's proposal would not accomplish that result in rural areas that may not be built-out by AWS licensees who nonetheless meet their substantial service obligation after 15 years through construction elsewhere. Because Sprint Nextel's 2.1 GHz operations tend to be located in more populated areas of the country, adoption of its proposal would likely result in all of its systems being relocated before the 15-year sunset occurs. However, the same cannot be said with respect to the more rural systems that use BRS channels 1 and 2.

proposal is a step in the right direction, it does not go far enough. As WCA explains in detail in its initial comments, the problem here is that AWS licensees will be subject to the Part 27 performance requirement under which a licensee can secure an expectation of renewal without actually having built facilities in substantial portions of its authorized territory.[22] For example, it is expected that most AWS licensees will be providing a mobile service, and the Commission has afforded Part 27 mobile service providers a "safe harbor" if they construct facilities that can serve just 20% of the population of their service area.[23] What that means, as a practical matter, is that AWS licensees can delay building out the more rural portions of their AWS service areas beyond their initial 15-year term, without risk of losing their authorizations.

Thus, CTIA is just plain wrong when it contends that a 15-year sunset "ensures that the transition will be completed by a date certain." It does no such thing. Given the nature of the AWS build-out requirement, it may be that AWS licensees choose to deploy facilities before the sunset date that require the prior relocation of BRS, but they may not, particularly with respect to the more rural BRS systems. Thus, if CTIA's approach were adopted, BRS incumbents, particularly in rural areas, could be stranded at 2.1 GHz and left to fend for themselves. That result simply cannot be squared with the Commission's objectives here.

WCA is certainly sensitive to the concern CTIA expresses that the transition process must, at some juncture, come to an end. The best way to accomplish this, however, is spelled out in WCA's initial comments – establish a date certain by which all BRS operation in the 2150-

[22] *See* WCA Comments at 29.

[23] *See, e.g., Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service*, Report and Order, 12 FCC Rcd 10785, 10844 (1997).

2162 MHz band must migrate themselves to 2.5 GHz at the expense of the AWS community.[24] In this manner, the Commission will honor its commitment that BRS incumbents will not have to bear the expense of their own relocation while AWS licensees will have certainty that after the migration deadline passes, the band will be cleared and their deployments will not be delayed due to continuing band-clearing requirements.[25]

C. *BRS Incumbents Should Not Be Required To Provide Subscriber Locations Or Binding Estimates Of Their Relocation Costs Prior To The Auction.*

The record developed in response to the *Fifth NPRM* provides no support for adoption of CTIA's proposal that BRS incumbents make public their subscriber locations prior to the AWS auction.[26] To the contrary, the record establishes such information is proprietary in nature and that its public disclosure would permit AWS auction participants and others to engage in a wide variety of anti-competitive mischief.[27] Indeed, the record reflects that *the Commission consistently has recognized the sensitive nature of subscriber information and has protected that information from disclosure*.[28]

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[24] *See* WCA Comments at 31-32. WCA initially proposed that the mandatory relocation be completed within ten years. However, in light of CTIA's proposal, WCA would not object were the mandatory relocation deadline extended until 15 years, provided that the remainder of WCA's proposal is also adopted.

[25] WCA recognizes that C&W and SpeedNet have proposed that an AWS licensee's obligation to fund BRS relocation not sunset, but rather remain in place until each BRS incumbent is relocated to comparable facilities using other spectrum. *See* C&W Comments at 6; SpeedNet Comments at 6. WCA would not object to adoption of this proposal. *See* WCA Comments at 30 n.53.

[26] *See* CTIA Comments at 6.

[27] *See* WCA Comments at 10-14.

[28] *Id*. at 13-14, *citing Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, Memorandum Opinion and Order and Order on Reconsideration, 12 FCC Rcd 9972, 9990 (1997)("[O]ur relocation rules are not intended to require the mandatory disclosure of incumbents' proprietary information or customer lists. . . . [I]ncumbents need not disclose competitively sensitive information."); *Improving Public Safety Communications In The 800 MHz Band*, Report and Order, Fifth Report and Order and Fourth Memorandum Opinion and Order, and

AWS auction participants do not need to know the specific location of each subscriber prior to participating in the auction. The Universal Licensing System ("ULS") already includes the authorized GSA for every BRS channel 1 and 2 license, and as a result of the *Order* that accompanied the *Fifth NPRM*, the Commission is requiring licensees to supplement that information by identifying the specific location of currently-operating wireless broadband base stations and video transmission facilities and the number of subscribers served by each.[29] With the information that will be within ULS prior to the AWS auction, AWS auction participants can evaluate their deployment plans and make reasonable assessments of when they will be required to migrate BRS operations to comparable facilities. The Commission has consistently refused to require incumbents facing involuntary relocation to provide extensive additional pre-auction information for the benefit of auction participants, recognizing that "while . . . the due diligence burden on auction applicants in encumbered services is not inconsequential, . . . it would be inequitable to shift the burden of due diligence onto the incumbents."[30] CTIA offers no reason to change course here and require BRS incumbents to disclose proprietary subscriber information to their competitors.[31]

Nor is there any basis for adopting the proposal by CTIA and T-Mobile USA, Inc. ("T-Mobile") that BRS incumbents submit a pre-auction estimate of their relocation costs and thereafter recover no more than 110% of that estimate (no matter how much the actual cost of the

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Order, 19 FCC Rcd 14969, 15078 (2004)["*800 MHz Rebanding R&O*"]("[w]e do not foresee any party having access to competitively-sensitive information such as the identity and other details of an incumbent's customers.").

[29] *See Licensees Of Broadband Radio Service Channels 1 and/or 2/2A Must File Site and Technical Data By December 27, 2005*, Public Notice, DA 05-3126 (rel. Nov. 30. 2005).

[30] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, 25184 (2003)["*AWS Services Rules Order*"].

[31] *Id*. at 25183-84; *MSS Second Report and Order*, 15 FCC Rcd at 12356.

comparable facilities exceeds that amount).[32] As a practical matter, BRS incumbents cannot be expected to accurately estimate their relocation costs when the timing of their relocation is dependent upon the deployment timelines of the eventual AWS auction winners.[33] Given that BRS incumbents will be adding subscribers, and in some cases making other modifications to accommodate that growth, the costs of migrating to other spectrum will inevitably grow over time until the relocation occurs. This variable, however, is clearly in the hands of the AWS licensees – the sooner they commence the involuntary relocation process, the fewer subscribers there will be to relocate and the less costs they will incur.

Moreover, there are other complexities that make it impossible for BRS incumbents to accurately estimate, prior to the AWS auction, the costs they will incur in migrating to the 2.5 GHz band years from now. For example, the costs of providing comparable BRS facilities will depend, in part, on the technologies and network designs deployed by the incumbent's new spectrum neighbors at 2.5 GHz, since Sections 27.53(l)(2) and 27.1221 of the Commission's Rules may impose additional out-of-band emissions and base station height limitations on replacement facilities, depending on a neighbor's network design. In addition, as Sprint Nextel correctly notes, the equipment that will be used for relocating BRS channel 1 licensees cannot even be designed, much less priced, until pending issues concerning the interference environment at 2496-2500 MHz are resolved.[34]

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[32] *See* CTIA Comments at 6-7; T-Mobile Comments at 3.

[33] Indeed, it is impossible to square CTIA's proposal for the submission of a pre-auction binding estimate of relocation costs with its support for allowing BRS licensees to add new subscribers and secure compensation for their relocation. This begs an obvious question - how can an operator that is entitled to add subscribers after the auction, and who has no idea of when it will be relocated to new spectrum, estimate relocation costs prior to the auction? CTIA's filing offers no answer.

[34] *See* Sprint Nextel Comments at 41.

Not surprisingly, these practical impediments to providing a binding pre-auction estimate of relocation costs are ignored by CTIA and T-Mobile. Similarly, they conveniently ignore that the Commission has never before imposed such a requirement on future victims of an involuntary relocation. Indeed, to the contrary, the Commission has already refused to require microwave incumbents in the AWS band to provide auction participants with any pre-auction estimate of their relocation costs, recognizing that such a requirement would impose an undue burden on incumbents and undermine the Commission's policy in favor of negotiated relocations.[35] Again, there is no reason for the Commission to depart from that precedent here.

D. *The Record Supports Adoption Of WCA's Proposal For Governing The Refarming Of The 2150-2162 MHz Band.*

In its initial comments, WCA presented the Commission with a comprehensive proposal for governing the refarming of the 2150-2162 MHz band. In a nutshell, that approach incorporates the following key elements:

- To maximize the deployment flexibility each AWS licensee secures at auction, any AWS licensee should be permitted to commence the mandatory negotiation period with respect to any BRS incumbent at any time and, if no agreement is reached, force an involuntary relocation.

- To protect each BRS incumbent from interference, no AWS licensee should be permitted to deploy any new or modified base station if interference is threatened unless it has either reached a voluntary agreement with the BRS licensee and any lessee, or concluded an involuntary relocation.

- Consistent with the self-relocation policies used in other proceedings, BRS incumbents should have the right to migrate to comparable facilities at any time.

- To assure both AWS licensees and BRS incumbents with certainty, BRS incumbents should be obligated to self-relocate by a date certain after the applicable AWS F Block license is issued.

- To preserve BRS network integrity and the proprietary relationship BRS operators have with their subscribers, the BRS incumbents should be responsible for selecting

[35] *See AWS Services Rules Order*, 18 FCC Rcd at 25184.

and deploying comparable facilities utilizing alternative spectrum when relocation is necessary. The BRS incumbents should have the right to relocate to the designated relocation spectrum for BRS channels 1 and 2, but should be permitted to relocate to other spectrum where doing so does not increase the costs of the comparable facilities.

- To avoid unnecessary delays, any BRS involuntary relocation should be completed no later than two years following the completion of the mandatory negotiation period.

- The appropriate AWS licensee (the AWS licensee that requests an involuntary relocation or the AWS F Block licensee where there is no such request) should be required to fund the migration of every BRS incumbent. Funding should be provided in advance based on a good faith estimate provided by the BRS incumbents, with a "true-up" process occurring at the conclusion of the migration to assure that incumbents receive no more, and no less, than they are entitled to.[36]

The record developed in response to the *Fifth NPRM* strongly supports adoption of this approach.

1. There Is No Disputing That Incumbents Are Entitled To Comparable Facilities Upon Relocation.

Those commenting in response to the *Fifth NPRM* on the issue are unanimous in supporting the concept that incumbents are entitled to relocation to "comparable facilities."[37] Moreover, there is no dispute that comparable facilities must not only include the broadband base station or the video headend, but must also include CPE. As CTIA correctly recognizes, "comparable facilities should include any new [CPE] that is necessary to continue operation as well as new transmitting facilities."[38] And, AWS and BRS interests both recognize that, given

[36] Several of those commenting on the *Fifth NPRM* address the sharing of BRS relocation costs among the various AWS licensees that will benefit from relocation. *See* T-Mobile Comments at 2-9; CTIA Comments at 14; Comments of PCIA, ET Docket No. 00-258 (filed Nov. 25, 2005). In response, WCA need only reiterate what it has said before – it is ambivalent as to how costs are spread among AWS licensees, so long as BRS licensees and lessees are fully compensated for their relocation costs and their receipt of that compensation is not delayed. *See* WCA Comments at 21 n.41.

[37] *See* BellSouth Comments at 4; C&W Comments at 4-5; CTIA Comments at 9-10; SpeedNet Comments at 4-6; Verizon Wireless Comments at 4-5.

[38] CTIA Comments at 9. *See also* Sprint Nextel Comments at 40; WCA Comments at 12 n.24; C&W Comments at 5; SpeedNet Comments at 5.

the nature of the services provided over BRS, incumbents must have the right to replacement facilities that utilize wireless technology.[39]

The commenters also agree that any evaluation of comparability must include consideration of throughput, reliability and operating costs.[40] That comparability must be measured across the BRS licensee's entire service area.[41] Indeed, as WCA points out in its comments, while throughput, reliability and operating costs are always relevant, where incumbents are providing service to end users, the Commission has expanded the "comparable facilities" definition, citing the Commission's recent statement that:

> Comparable facilities are those that will provide the same level of service as the incumbent's existing facilities, with transition to the new facilities as transparent as possible to the end user. Specifically, (1) equivalent channel capacity; (2) equivalent signally capability, baud rate and access time; (3) coextensive geographic coverage; and (4) operating costs.[42]

Moreover, nothing in the record opposes adoption of WCA's proposal that the Commission incorporate into the definition of BRS comparable facilities the same approach it utilized for relocation of SMR licensees in the upper 200 channels of the 800 MHz band and subsequently

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[39] *See* CTIA Comments at 10 n.29 (incumbents "may be given a cash settlement for reimbursement or relocated to alternative wireless facilities."); BellSouth Comments at 7 ("because the Commission has set aside new spectrum in the 2.5 GHz band specifically for BRS-1 and BRS-2 licensees as part of the post-transition band plan, relocating facilities and customers to the 2.5 GHz band would be consistent with Commission policies."); Sprint Nextel Comments at 34-37; Verizon Wireless Comments at 4 ("[t]o avoid [interference between BRS and AWS], existing BRS systems will need to be relocated to comparable facilities. The Commission has already identified the 2496-2690 MHz . . . band as the new spectrum home for BRS.").

[40] *See* BellSouth Comments at 4; CTIA Comments at 9; Sprint Nextel Comments at 34; Verizon Wireless Comments at 5; C&W Comments at 4-5; SpeedNet Comments at 4.

[41] *See* Sprint Nextel Comments at 40 ("AWS new entrants must bear the deconstruction and replacement costs for providing comparable facilities capable of serving the same geographic area in the 2.5 GHz band as was served in the 2.1 GHz band in terms of throughput, reliability, and operating costs."); WCA Comments at 19 n.40.

[42] WCA Comments at 19 n.40, *citing Improving Public Safety Communications in the 800 MHz Band*, Memorandum Option and Order, WT Docket No. 02-55, FCC 05-174, ¶ 37 (rel. Oct. 5, 2005). *See also* Sprint Nextel Comments at 12.

employed in defining comparable facilities for licensees relocated by virtue of Sprint Nextel's rebanding of the 800 MHz spectrum (*i.e.* the comparable facilities doctrine "requires that the change [in the relocated service provider's facilities] be transparent to the end user to the fullest extent possible" and that system, capacity, quality of service, and operating costs are to be considered).[43]

Verizon Wireless contends that "[c]omparable facilities should not include modifications to the incumbents systems that would enable the incumbent licensee to provide an entirely or materially different service."[44] Certainly, no AWS licensee should be funding an operator's migration from a video service to a broadband service. However, because of the Commission's decision to specify 2496-2502 MHz and 2618-2624 MHz as the relocation spectrum for BRS channels 1 and 2, the Commission has forced BRS licensees to use different technologies upon migration. As WCA noted in its initial comments, the designated replacement spectrum for BRS channels 1 and 2 is fundamentally different from their current assignment at 2150-2162 MHz, which is "ideally suited for upstream communications in a Frequency Division Duplex ("FDD") system because they are contiguous, are lower in the spectrum (and thus have greater range at lower power) and are separated from the downstream channels such that interference is not a concern."[45] By contrast, the designated relocation spectrum chosen by the Commission is not contiguous, is higher in the spectrum (and thus will have less range) and is in close proximity to

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[43] WCA Comments at 19 n.40, *quoting Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Sections 3(n) and 322 of the Communications Act - Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Second Report and Order, 12 FCC Rcd 19079, 19112-13 (1997)["*800 MHz SMR Second R&O*"] and *citing 800 MHz Rebanding R&O*, 19 FCC Rcd at 15077.

[44] Verizon Wireless Comments at 5 (emphasis in original).

[45] WCA Comments at 2-3, n.4.

the channels used today for downstream transmissions, thus complicating FDD usage (which requires separation between upstream and downstream channels). Moreover, the technical rules the Commission has adopted to govern BRS channel 1 and 2 operations in the 2496-2502 MHz and 2618-2624 MHz bands differ from those applicable today, and in many cases will require that base station antennas be located closer to the ground than at present and/or that out-of-band emissions be attenuated more stringently than at present.[46]

WCA anticipates that all of these factors will be considered by AWS licensees and BRS incumbents negotiating in good faith during the mandatory negotiation period, and that mutually satisfactory arrangements can be reached. However, where an agreement is not possible and an involuntary relocation is forced to occur, the migration to the 2.5 GHz band will be far more complicated than merely providing new equipment tuned to different frequencies, and the replacement facilities will likely be quite different from those in place today. That is the inevitable by-product of the Commission's new regulatory regime for BRS, and incumbents should not be penalized if the new technologies they deploy to provide service differ materially from those employed before.

2. BRS Incumbents Should Be Responsible For Selecting And Deploying Their Comparable Facilities Subject To Cost Controls And Deployment Deadlines That Protect AWS.

Not surprisingly, T-Mobile, Verizon and CTIA all support the *Fifth NPRM*'s proposal, based on the PCS/microwave relocation model, that the AWS licensee forcing an involuntary relocation select and deploy comparable facilities on a turn-key basis. The record before the Commission, however, establishes that allowing AWS licensees to control the migration process and physically change out equipment at every subscriber location raises serious competitive and

[46] *See* 47 C.F.R. §§ 27.53(l)(2), 27.1221.

privacy concerns.[47] Suffice it to say that nothing in the filings by the AWS interests refutes the showings by WCA and Sprint Nextel of the substantial competitive harm that could befall BRS operations if the PCS/microwave model is blindly followed here. WCA's proposed approach is clearly superior – it protects the BRS operator's proprietary information, while its cost-control and timing provisions assure that the BRS incumbents do not abuse their control over the relocation process to the detriment of AWS licensees.

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[47] *See* WCA Comments at 14-21; Sprint Nextel Comments at 24-26. Plus, allowing BRS incumbents to select and deploy their own comparable facilities avoids the need for the right of return that Verizon Wireless finds so troubling. In its initial comments, WCA discusses at length that one of the benefits of allowing relocating BRS licensees and lessees to select and deploy their own comparable facilities is that it mitigates the need to provide them with a 12 month "right of return" under which the incumbent's existing facilities would be maintained for a 12 month trial period, and the incumbent would have the right to return to the 2150-2162 MHz band if the new facilities prove not to be comparable to the old ones. *See* WCA Comments at 16-18. However, if the Commission does not adopt WCA's proposal, and instead permits the AWS auction to select and deploy the replacement facilities that will provided the BRS licensee and lessee, then a "right of return" is essential. While Verizon Wireless takes a contrary view, it ignores the essential role that the "right of return" policy would play in protecting BRS incumbents from anti-competitive conduct during the involuntary migration process. As the Commission has previously recognized, its return policy is designed "to ensure that microwave incumbents have a full opportunity to operate their new systems under real-world operating conditions and to obtain redress from the PCS licensee if the new system does not perform comparably to the old system or pursuant to agreed-upon terms." *Microwave Cost-Sharing Order*, 11 FCC Rcd at 8849. Verizon Wireless would have the Commission believe that just because the Commission has designated spectrum at 2.5 GHz for BRS relocation, there is no longer a need to afford a "right of return." *See* Verizon Wireless Comments at 8. That is nonsense. The fact that there is alternative spectrum available does not mean that any facility the AWS licensee might select and deploy will be comparable under all the relevant considerations – throughput, reliability, coverage, interference protection and the other factors discussed *supra* in Section II.D.1. As the record reflects, because AWS will be competing with BRS in the broadband marketplace, if the AWS licensee can select and deploy replacement equipment, it has a strong incentive to intentionally provide the BRS incumbent with facilities that are not comparable. *See* WCA Comments at 17-18.

Verizon Wireless also wrongly contends that affording BRS incumbents a right of return will "inject uncertainty into the clearing process." Verizon Wireless Comments at 8. The AWS licensee would have complete control over any possible uncertainty, and could eliminate it entirely by the simple expedient of providing comparable facilities sooner rather than later. And, of course, Verizon ignores the uncertainty that its proposal would cause BRS incumbents – uncertainty as to whether their AWS competitor can be trusted to provide facilities that are truly comparable.

In the end, however, WCA agrees that there should be no right of return, for the simple reason that protection of BRS network integrity and proprietary subscriber information mandates that BRS licensees be permitted to select and deploy their own comparable facilities.

3. The Record Supports Adoption Of WCA's Proposals For Determining When An AWS Licensee Must Secure BRS Consent Or Involuntarily Relocate Incumbent Operations Before Deploying.

There is general agreement that, as CTIA put it, "new entrants should be required to relocate incumbents prior to initiating operations that would cause interference to the incumbent" and that "this requirement should apply to any BRS system adversely affected by AWS operations including BRS systems operating in markets adjacent to those licensed to the AWS licensee."[48] Thus, there is general support for WCA's proposal that an AWS licensee be precluded from deploying any new base station that poses a threat of interference to BRS operations (as determined under a specific technical standard) unless it has secured the consent of the affected BRS interests, or the BRS system has been involuntarily migrated to comparable facilities using alternative spectrum.[49]

There is no disagreement among those filing with WCA's view that, given the point-to-multipoint nature of the services offered by BRS incumbents, involuntary relocation must be undertaken on a system-by-system, rather than a link-by-link, basis.[50] As CTIA notes, "the BRS incumbent should be afforded system-by-system relocation, rather than piecemeal relocation of discrete end user stations."[51] Verizon Wireless, Sprint Nextel, and SpeedNet all agree with WCA and CTIA that a system-by-system approach is appropriate here.[52] CTIA and Verizon Wireless both propose that the Commission define a "system" as an individual base station, all end user units served by that base station and the wireless facilities that connect each user to the

[48] CTIA Comments at 3.

[49] *See* WCA Comments at 32-37.

[50] *Id*. at 33-35.

[51] *Id.* at 4-5.

[52] *See* Verizon Wireless Comments at 4; Sprint Nextel Comments at 26-34; SpeedNet Comments at 3.

base station.[53] WCA does not object to this approach for defining a two-way broadband "system" and suggests that similarly a video "system" be defined as the transmission headend, all end user facilities served by that transmission headend and the wireless facilities that connect each user to the transmission headend.

Those commenting on the subject also unanimously agree that the standards used by the Commission to determine when PCS deployments pose a threat to point-to-point microwave relocation are wholly inapplicable here. As CTIA correctly notes, "the interference standard in place for *Emerging Technologies* incumbents ("Bulletin 10-F") does not adequately address the interference potential of new entrants to existing BRS incumbents."[54] A different approach, one that is narrowly tailored to reflect the potential for interference to the broadband base stations and video CPE that are deployed at 2150-2162 MHz, is necessary.

WCA agrees with CTIA that there needs to be a "bright line" test that can be applied simply, thereby assuring protection to BRS and certainty to AWS.[55] As reflected by WCA's initial comments, it agrees with CTIA that "any AWS licensee that wants to deploy within the line of sight to a BRS hub station, even if the BRS station is in a market adjacent to those licensed to the AWS licensee, [must] relocate the BRS system and the customers served by that system."[56] Sprint Nextel has proposed a "relocation zone" approach that holds promise as a

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[53] *See* CTIA Comments at 4-5 n.15; Verizon Wireless Comments at 4-5 n.6.

[54] CTIA Comments at 5. *See also* Sprint Nextel Comments at 20-21.

[55] *See* CTIA Comments at 5.

[56] *Id*. 5-6. CTIA and Sprint Nextel both reference the propagation model set forth in Appendix D to the *Report and Order* in MM Docket No. 97-217 for calculating whether a given AWS base station has line-of-sight to a BRS base station. *See* CTIA Comments at 19; Sprint Nextel Comments at 30 n.54. However, Appendix D was modified by the Commission twice after it was first adopted in 1998. The most recent version was released by the Commission on April 7, 2000, and the relevant propagation model is set forth in Paragraphs 50-67 of that revised version. *See Commission Amends Methodology*

vehicle by which an AWS licensee can readily identify any BRS broadband base stations that it must relocate. WCA looks forward to working over the coming weeks with the Commission and other participants in this proceeding to assure that the procedures for conducting the analysis are as simple and as clear as possible, assuring protection to BRS and certainty to AWS.[57]

However, WCA must disagree with Sprint Nextel's suggestion that an AWS licensee's relocation obligations relative to a BRS video system should be based on the same approach. It makes perfectly good sense to require an AWS licensee to relocate a broadband system where the AWS base station "sees" the BRS base station, since the AWS base station transmissions will be interfering with the reception of signals from subscribers at the BRS base station. However, in the case of a downstream video BRS system, the interference will be suffered not at the transmission headend, but at subscriber locations within the licensee's GSA.[58] BRS downstream video licensees have been authorized to serve subscribers at any location within their GSA, and have historically been entitled to interference protection at every point within that authorized service area. Thus, WCA reiterates its proposal that each AWS licensee should be required to commence mandatory negotiations with any BRS licensee and spectrum lessee engaged in the

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Used For Calculation Of Interference Protection And Data Submission For MDS and ITFS Applications For Two-Way Systems, Public Notice, DA 00-938 (rel. April 7, 2000).

[57] *See* Sprint Nextel Comments at 26-27.

[58] Sprint Nextel suggests that its approach will protect AWS receivers against harmful interference from BRS video operations. *See* Sprint Nextel Comments at 32-33. However, the purpose of this rule is *not* to protect AWS. Remember, AWS licensees are free to commence mandatory negotiations and thereafter force an involuntary relocation at will – they do not have to demonstrate potential interference from BRS. The rule at issue here – delaying AWS base station deployments until the band is clear - is designed to protect BRS systems from AWS and the technical standard must focus on interference to BRS video subscribers.

downstream transmission of video programming whenever the AWS licensee proposes to deploy a base station that has a line-of-sight to the BRS station's GSA.[59]

E. *BRS Spectrum Lessees Are Necessary Parties To Any Refarming Process.*

Of all of those responding to the *Fifth NPRM*, only CTIA supports the Commission's suggestion that BRS spectrum lessees be excluded from the formal processes involving 2.1 GHz spectrum refarming unless invited to participate by its BRS spectrum lessor.[60] However, as Sprint Nextel and WCA discuss in great detail, excluding the lessee from the negotiations and allowing the licensee and newcomer to reach their own agreement without providing the lessee with just compensation both is unfair to the entity that is actually providing service to the public and raises serious legal issues.[61] As such, the Commission should reconsider its initial inclination and assure that at every stage spectrum lessees have a seat at the table.

F. *There Is No Support For Discriminating Against Those Who Acquire BRS Licenses Or Who Acquire Control Over BRS Licensees After The Effective Date Of New Rules.*

In the *Fifth NPRM*, the Commission proposes that "an assignment or transfer of control would not disqualify a BRS incumbent in the 2150-2160 MHz band from relocation eligibility so long as the facility is not rendered, as a result, more expensive to relocate."[62] Significantly, no commenting party seeks rules that would discriminate against those who acquire BRS licenses or who acquire control of a BRS licensee after the effective date of new rules governing relocation.

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[59] *See* WCA Comments at 36-37. WCA has proposed that in conducting these analyses, it should be assumed that BRS reception equipment is installed 30 feet above ground level at each point within the GSA, and calculations should be conducted based on the actual height of the AWS transmission antenna, actual terrain elevations and assuming 4/3 earth radius propagation characteristics. *Id.*

[60] *See* CTIA Comments at 10.

[61] *See* Sprint Nextel Comments at 42-44; WCA Comments at 44-45.

[62] *Fifth NPRM*, 20 FCC Rcd at 15867.

To the contrary, those filing on the issue uniformly object to the adoption of any discriminatory policy. As WCA notes in its filing, "no restriction should be imposed on the ability of a BRS channel 1 or 2 licensee to assign, transfer or lease its channel, and its transferee/assignee/lessee should be entitled to the same rights as any other BRS channel 1 or 2 licensee/lessee."[63] Sprint Nextel echoes those concerns:

> Assignments and transfers of spectrum licenses have no bearing whatsoever on whether or not relocation will be any more, or less, costly. Any assignee or transferee simply assumes the rights and obligations under the terms of the original BRS relocation decision. The new licensee will bear the same obligation to mitigate costs as the original licensee, and all licensees will have a duty to negotiate in good faith for a timely, cost-effective transition. Despite having no real public interest benefits, the proposal to restrict alienation undermines the strong public interest in moving spectrum to its highest valued use. Particularly in the 2.5 GHz band where overlapping, irregularly shaped licenses result in a "Swiss cheese" licensing scheme, assignments and transfers are essential for wireless licensees to assemble the necessary spectrum footprint to offer service. By calling into question the ability of transferred licenses to receive relocation payments, however, the proposed rule will cast a cloud of uncertainty over important transactions in the 2.5 GHz band. Therefore, assignments and transfers of BRS licenses should never exempt AWS licensees from their relocation obligations.[64]

Thus, the Commission should make clear that the relocation rights and responsibilities of BRS licensees operating at 2150-2162 MHz will not be altered by license assignments or transfers of control that occur prior to relocation.

III. CONCLUSION.

For the reasons set forth above and in WCA's initial comments in response to the *Fifth NPRM*, it is imperative that the Commission adopt rules that are fundamentally fair to BRS licensees, system operators and, most importantly, consumers. The proposals advanced by the

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[63] WCA Comments at iii.

[64] Sprint Nextel Comments at 45-46.

AWS interests do not achieve that fairness. Therefore, WCA urges the Commission to adopt the proposals advanced by WCA in its initial comments.

The WCA approach protects the viability of existing businesses operating on BRS channels 1 and 2, allowing them to continue their growth (particularly in areas where broadband alternatives are not available) with full certainty that when the time comes to relocate to the 2.5 GHz band, the relocation will be accomplished at no cost to BRS in a manner that protects the integrity of the BRS network and proprietary subscriber information. WCA's approach is equally fair to AWS applicants, however, as it assures that they can commence the relocation process as soon as they need to clear the spectrum, that BRS interests will only be reimbursed for the costs of deploying comparable facilities, and that BRS interests complete their relocation in timely fashion.

Respectfully submitted,

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